No. 217.

Br. of Dawson for Appellee

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Supreme Court of the United States.

No. 217.

FLORENCE AUDUBON and JOHN W. HULSE, Appellees,

vs.

ROBERT W. SHUFELDT.

BRIEF FOR APPELLEE.

JOHN T. DAWSON,
*Counsel for Appellee.*

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4-2-01

# Supreme Court of the United States

*No. 217.*

FLORENCE AUDUBON AND JOHN W. HULSE, ASSIGNEE,

*vs.*

ROBERT W. SHUFELDT.

The first question to be disposed of in this case is whether the appellee was a bankrupt at the time he was adjudged a bankrupt, and the law of 1898 is the one to decide this question.

This law defines who may become bankrupts in section 4 *a*, where it is stated that—

"Any person who owes debts, except a corporation, shall be entitled to the benefits of this act as a voluntary bankrupt."

To this clause of the bankruptcy law there are no exceptions whatever, save the one set forth in it, namely, a corporation. Therefore on the day the defendant, the appellee, filed his petition as a voluntary bankrupt under this act, and was adjudged a bankrupt, he was, as a citizen of the United States, as much entitled to the benefits of this act as though he was in no way connected with the army.

Apart from the simple assertion of the counsel for the appellant, this court has no actual knowledge of his, the appellee's, connection with the Army of the United States, and even had the court that knowledge there can be nothing in this contention, inasmuch as the defendant is a retired surgeon of the army, that that fact debars him from being entitled to the benefits of the bankruptcy act, for it is clear from the wording of section 4 *a* that the defendant is just as much entitled to the same as though he had never entered the army, there being no exception or limitation as to who are entitled to the benefits of this act. We therefore, without further remark, dismiss this and pass to the question whether alimony is a provable debt or not under the present bankruptcy law. By referring to section 17 of that law we find that there are but four (4) exceptions to provable debts, and the court will readily see that alimony is not one of these four exceptions to what the law considers to be provable debts, and that this has been the interpretation of the law is clear from the rulings of the United States courts on this subject, as an examination of the following cases, here cited and thus far reported, will show:

*In re* Houston, 94 Fed. Rep., 119.
*In re* Van Orden, 96 Fed. Rep., 86.
*In re* Challoner, 98 Fed. Rep., 82.

These are all cases directly in point, and all hold that alimony is a provable debt. Moreover, had any doubt existed as to what the intent of Congress on this subject was, the matter of alimony would have been placed among the claims excepted by this act of Congress. In support of this view of the question, we have but to invite the attention of this court to the bill that was introduced at the last Congress, and pressed for passage, amending the present bankruptcy law to the extent of exempting alimony from the list of provable debts. The fate of that bill is well known, for after a full discussion of the same the Judiciary

Committee of the United States Senate refused to report it, thus tacitly admitting that it was in their estimation a provable debt; and, while it is perfectly natural for sympathetic attorneys to shed tears without number and raise the roofs of court-houses, asking sympathy for some wronged and injured client, this court decides cases on the naked law as they find it and not on the desires of what attorneys see fit to try and proclaim what the law should be.

An examination of page 4 of the Record filed in this case will exhibit to this honorable court what the views held on this subject by the trial judge in the court below were. We assumed his views to be his honest ones, and therefore proceeded to effect a compromise with the party named in this case in the matter of her claims for alimony. On the 7th day of July, 1900, a written contract was duly entered into, and by its terms we agreed to pay her the sum of $25 per month alimony accruing after the aforesaid date and $10 per month on the alimony in arrears. This compromise has been fully complied with by the defendant in this case from the time of its having been entered upon up to the present date. Rather more than a year ago the plaintiff herein procured us to be arrested and brought before a court-martial for trial for having failed to pay her her alimony, the charge being that of "conduct unbecoming an officer and gentleman." After an extended trial before an unusually strict court, composed of officers of high rank and distinction, we were fully and honorably acquitted, and yet our only plea brought before that military court was our discharge in bankruptcy. Major General Merritt was but the reviewing authority in this case, and his opinion in no way affected the findings of the court, and for the time he seemed to overlook the fact that the same Congress that passed the bankruptcy law granted him his commission and recognized his right to draw his pay. We are, however, content to continue the fulfillment of the terms of the compromise

we have made under the trial judge's finding in the matter of this alimony.

We nevertheless trust that this honorable court will give us a fair and honest interpretation of the act of Congress touching the bankruptcy law, and we simply desire to state that our acts throughout the history of this entire cause have been governed by the firm and honest belief that we have held that alimony is a provable debt. We believe the cases we have cited of trials wherein this point has been distinctly involved before United States courts support this view. These courts have further contended that the debt of alimony is no more a sacred debt than any similar obligation demanding honorable liquidation. We claim that our discharge in bankruptcy should protect us from further annoyance on the part of the courts, both of the States and the United States, inasmuch as we made the compromise after we were discharged by the trial court. Moreover, we are faithfully on our part complying with all the terms of that compromise, and the plaintiff is accepting our $35 per month at the time it is due each month, and yet while she thus continues to accept it from month to month she is prosecuting her appeal before this honorable court, praying for a reversal, doubtless with the view of having us submitted to another trial by court-martial, and if dismissed the service will deprive us of the only means of complying with the compromise legally entered into by both parties concerned. Even as this brief goes to press we are sending her the $35 due on the 1st to the 3d of April.

JOHN T. DEWEESE,
*Counsel for Appellee.*